

United States  
Circuit Court of Appeals  
FOR THE NINTH CIRCUIT

JOHANNA HIRLINGER, Petitioner,

v.

SAMUEL L. BOYD, as Trustee in Bankruptcy of  
THE LANE LUMBER COMPANY, LIMITED,  
a Corporation, Bankrupt, Respondent.

In the Matter of THE LANE LUMBER COMPANY, LIMITED, a Corporation, Bankrupt.

On Petition for Revision from the United States  
District Court for the District of Idaho,  
Northern Division.

Brief of Respondent, Samuel L. Boyd, Trustee.

E. N. LAVEINE,  
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Samuel L. Boyd, Trustee,  
Coeur d'Alene, Idaho.

JOHN H. WOURMS,  
Amicus Curiae,  
Wallace, Idaho.

Filed this.....day of February, 1914.

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Clerk.

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LIMITED, a Corporation, Bankrupt.

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Brief of Respondent, Samuel L. Boyd, Trustee.

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THE UNITED STATES CIRCUIT COURT OF  
APPEALS FOR THE NINTH CIRCUIT.

JOHANNA HIRLINGER.

Petitioner,

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## STATEMENT OF THE CASE.

Johanna Hirlinger on the 12th day of August, 1911, before the first meeting of creditors of the bankrupt, verified her proof of claim (Trans. p. 8) and filed the same with the referee on September 7, 1911, (Trans. p. 9).

During the proceedings had in this estate, which has been in course of administration for two and one-half years, the petitioner participated at all times as an unsecured creditor and not until September 3, 1913, over two years after adjudication, did petitioner file her petition for leave to file substituted proof of secured debt. (Trans. p. 16).

It will be observed that the notes on which the un-

secured and the secured claims are based were executed on June 1st, 1908. (Trans. p. 9).

Objections were filed by the trustee, (Trans. p. 16) which were overruled by the referee who granted the prayer of the petitioner allowing the substitution of a vendor lien claim for the unsecured debt, which was allowed by the court on May 10, 1913. (Trans. p. 29).

On petition, by the trustee, the referee's order was reviewed before the District Judge, (Trans. p. 19) who on December 2, 1913, reversed the referee and denied the petitioner the right to file a vendor lien claim in lieu of her allowed unsecured proof of debt filed two years prior to the filing of the petition aforesaid. (Trans. p. 28).

#### ARGUMENT.

The petitioner's assignments of error seeking to limit the authority of the District Judge, are not well taken and are disposed of by respondent in his brief, pages 7 and 8, in cases §2336.

The petitioner seems to be laboring under the impression that she has cured the estoppel due to her laches by reciting in her petition for rehearing before the District Judge (Trans. pp. 32-35), that she offers to pay into court the taxes paid and legal interest thereon which have been paid by the trustee. It was her duty to make the tender to the trustee either

in lawful money or in writing. Unless this is done the matter could not be compromised by the trustee. under the mandate of Section 58a. (7).

It will be observed that in the memorandum decision of the District Judge (Trans. p. 27), the court referred to the case of *Bayley v. Greenleaf*, referred to and elaborated upon by appellant in case §2363.

It is a fact that the claimant, as an unsecured creditor, had a right to and did participate in the administration of the estate and had the right to and did vote as an unsecured creditor.

It is also true that taxes were paid upon the land by the trustee and other expenses were incurred by him in looking after and protecting the land in controversy. (Trans. p. 30).

It is also true that he has paid in full a trust deed covering this, together with other lands, which secured a large issue of bonds of the bankrupt company on the land sought to be impressed with a vendor's lien by the petitioner. (Trans. p. 27).

Practically all of the claims of unsecured creditors, aggregating several hundreds of thousands of dollars, have been allowed by the court.

The trustee takes the position that on account of the gross negligence and laches of the petitioner that she was and is estopped from asserting her lien sought to be impressed upon a portion of the proper-

ty of the bankrupt and that under Section 47a the trustee has been vested with a lien paramount to that which the petitioner would acquire were she permitted to file her proof of secured debt and that if her petition be granted it will alter her position materially and will enable her to obtain an advantage over the other creditors to which, on account of her negligence and laches, she is not entitled.

The applied for change of status is not based on newly discovered evidence. The statutory lien is presumed to have been known to claimant and the application for change from an unsecured to a secured claim should have been made within one year after the adjudication in bankruptcy.

There has been such laches that the court would be very unjust to the creditors and to the trustee should it permit the substitution of the secured for the unsecured claim.

There is no pretense of fraud, concealment, surprise or newly discovered evidence.

There should be a reasonably speedy disposition of bankruptcy matters and no such precedent, as this would be, should be established.

The object of the year limitation, Sec. 57n Bankruptcy Act, is to enable dispatch in administration.

Remington on Bankruptcy, Sec. 718, Vol. 1, p. 434.



"Section 57n is an absolute termination of the court's power to allow claims that are presented after the expiration of one year."

Remington on Bankruptcy, Sec. 723, Vol. 1, 436.

In re Peck 168 F. 48, C. C. A. 2nd Circuit.

"A proof of claim cannot be amended after the year period by the addition of a new or different demand."

Loveland on Bankruptcy, 4th addition, Sec. 333, Vol. 1, p. 688.

In re T. A. McIntyre & Co. 176 F. 552, C. C. A. 2nd Circuit.

In re Ingalls Bros., 137 F. 517, C. C. A. 2nd Circuit.

In re Hawk, 114 F. 916, C. C. A. 8th Circuit.

In re Kessler et al., 184 F. 51, C. C. A. 2nd Circuit, is a late case holding amendments may be made after the expiration of a year after adjudication, provided applicant is neither negligent nor guilty of laches for not moving to amend until the year has elapsed.

There is no showing by petitioner, Johanna Hirlinger, which would overcome her negligence and laches. The statement in her petition for leave to file a substituted proof of secured debt (Trans. p. 11) that "through ignorance, inadvertance and mistake,

and without knowledge of the law and the facts" is not sufficient to bring her within the class to which the courts, in some instances, have granted relief.

In re Ives 113 F. 911, C. C. A. 6th Circuit.

Respectfully submitted.

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Wallace, Idaho.

A copy of the foregoing brief received this.....  
day of Feb. 1914, at Coeur d'Alene Idaho.

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Attorney for Petitioner.